

"...., the pedestal being mechanically linked to the pedestal;..."

To be consistent with the Remarks, said Amendment should have stated:

"...., the pedestal being mechanically linked to the mounting frame."

The error has resulted in the Examiner's 35 U.S.C. § 112 rejections.

Amendments to Claim 1 set forth above correct said error.

Wherefore, the Applicant respectfully requests that the Examiner's 35 U.S.C. § 112 (second paragraph) rejection directed to Claims 1, 3, 4, 6-11, and 13-18 be withdrawn.

2. The Examiner has also rejected Amended Claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,795,332 issued March 5, 1994, to *Eriksson*. The Applicant respectfully traverses said rejection, and requests that the Examiner, upon review of the traversing arguments set forth below, and upon further review of the re-amendment of Claim 1 filed contemporaneously herewith, decline to extend said rejection to re-Amended Claim 1. Traversing arguments follow:

Argument Traversing 35 U.S.C. § 102(b) Rejection of Claim 1

Subsection (d) of Amended Claim 1 included the following limitation:

"(d) means for alternately pivoting and counter-pivoting the pedestal, the means for alternately pivoting and counter-pivoting the pedestal being connected operatively to

the pedestal, the means for alternately pivoting and counter-pivoting the pedestal controlling pivoting movements of the pedestal about the longitudinal axis, and the means for alternately pivoting and counter-pivoting the pedestal pivoting the pedestal with respect to the mounting frame."

For purposes of convenience of reference, said section (d) means element is referred to as the "pivoting means element".

Close examination of the Examiner's October 10, 2006 Detailed Action shows that the only text which discusses the pivoting means element appears at page 2, paragraph 5, line 3, where the Examiner identifies:

"...a means for pivoting the pedestal including an **axle (at stand 27)**, as recited in Claim 3, and a pair of outriggers (12 and 13), as recited in Claim 4." (Emphasis Added)

In order to clarify the Applicant's discussion of the "axle (at stand 27)" structure, magnified portions of Eriksson's Drawing Figs. 2 and 3 are submitted. For convenience of reference, the Applicant has hand labeled with Reference Arrow "A" a circular structure which appears upon the side wall of Eriksson's stand 27. The Applicant has confirmed by means of a telephone conference with the Examiner that such circular structure "A" and the "axle (at stand 27)" are considered by the Examiner to be one and the same.

The function of Eriksson's circular structure "A" is not discussed in the Specification of Eriksson. However, Eriksson's drawings show that the circular structure "A" could not function as an axle. While Eriksson's log loader mechanism is installed for use upon the trailer, pivotal motion of the loader about circular structure "A"

would be mechanically impossible. While Eriksson's log loader is in the process of being offloaded as depicted in Fig. 2 or is finally offloaded to rest at roadside as depicted in Fig. 3, any pivoting motion about the circular structure "A" would only awkwardly tip and threaten to topple the loader. Accordingly, the Examiner could have appropriately found that Eriksson's circular structure "A" could not function as an axle. Without the finding of an "axle (at stand 27)", the Examiner could also have appropriately concluded that Eriksson did not teach the pivoting means element of Subsection (d) of Amended Claim 1. Accordingly, Amended Claim 1 could have been appropriately allowed.

Notwithstanding, in order to further distinguish the subject matter of Claim 1 from the log loader of Eriksson '332, Claim 1 has been re-amended to specify that the pivoting means facilitates pivoting motion of the pedestal about the longitudinal axis while the pedestal is mechanically linked to the mounting frame. Looking to Drawing Fig. 1 of the instant application, it can be seen that the pivoting means (i.e., axle 16) facilitates pivoting motion of the pedestal 2 about the longitudinal axis (i.e., the rotational axis of axle 16) while the pedestal 2 is mechanically linked to the mounting frame 24. Therefore, no new matter is inserted into the application by virtue of said re-amendment of Claim 1.

In contrast, while Eriksson's pedestal 34 is mechanically linked to Eriksson's mounting frame/swing arm 7, pivoting motion of the pedestal 34 about the longitudinal axis is mechanically impossible. At all times that Eriksson's pedestal 34 is mechanically linked to the mounting frame/swing arm 7, the pedestal 34, along with its rigidly

attached stand 27, rests upon the upper surface of the bearing plate or shelf 4. While the pedestal 34 and the stand 27 rest upon the plate 4, the plate 4 itself resists any such pivoting motion.

In the case of *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983), the Federal Circuit of the U.S. Court of Appeals held that "anticipation requires the disclosure in a prior art reference of each element of the claim under consideration." However, it is not enough that the reference disclose all the claimed elements in isolation. Instead, as stated by the Federal Circuit, the prior art reference must disclose each element of the claimed invention arranged as in the claim. See *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984).

The pivoting means element of Subsection (d) of Re-Amended Claim 1 does not exist within the structure of Eriksson's log loader. While the log loader is in its use configuration, it will only pivot about the vertical axis, and while the log loader is offloaded and stored at roadside, it merely constitutes a disassembled machine. Therefore, following *W.L. Gore & Associates*, supra, the Examiner should decline to extend the anticipation rejection of Amended Claim 1 to Re-Amended Claim 1.

If the Examiner were to finally determine that Eriksson '332 teaches means for alternately pivoting and counter-pivoting the pedestal about the longitudinal axis, such means could not produce such motion while Eriksson's pedestal 34 is mechanically linked to Eriksson's mounting frame/swing arm 7. Accordingly, the Examiner should find that any means for alternately pivoting and counter-

pivoting about the longitudinal axis which is found to exist within the log loader of *Eriksson '332* is not arranged as required by Re-Amended Claim 1. Therefore, following *Lindemann Maschinenfabrik GmbH*, supra, the Examiner should, in any event, decline to extend the anticipation rejection of Amended Claim 1 to Re-Amended Claim.

Wherefore, the Applicant respectfully requests that Re-Amended Claim 1 be allowed.

3. The Examiner has similarly rejected Claims 3, 4, 6-9, 10, 11, 13-15, and 16-18 as being anticipated by *Eriksson'332*, as being obvious in further view of *Pinkston*, or as being obvious in further view of *Sonerod*. Each of said claims depends from Re-Amended Claim 1, they each having Re-Amended Claim 1 as a common parent claim. Accordingly, arguments set forth above in support of a decision by the Examiner to decline to extend the anticipation rejection of Amended Claim 1 to Re-Amended Claim 1 are restated in support of allowance of dependent Claims 3, 4, 6-11, and 13-18. Upon allowance of Re-Amended Claim 1, the Applicant respectfully requests that the Examiner allow dependent Claims 3, 4, 6-11, and 13-18.

4. In the event an Examiner's Amendment would result in allowance of any or all claims, the Applicant invites and would welcome such an amendment.

Prayer

WHEREFORE, the Applicant, Lester Kent Rhodes, respectfully requests that pending Claims 1, 3, 4, 6-11, and 13-18 be allowed.

Respectfully submitted,

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